IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7848 of 2003

Between:

Forum for a better Hyderabad (Confederation of Voluntary Organization of Hyderabad), Rep.by its Coordinator Water Bodies Wing Dr.Sajjala Jeevanandha Reddy, S/o.Subba Reddy,aged-60 years Plot.No.6,ICRISAT Colony,Secunderabad.

..... PETITIONER

AND

1 Govt.of A.P Rep.by its Secretary Dept of Youth Advancement Tourism & Culture, Secretriat, Hyderabad.
2 The Hyderabad Urban Development Authority Rep.by its Vice Chairman Paiga Palace Opp: Police Lines, Rasoolpura Secunderabad.
3 Budha Purnima Project Authority Rep.by its Vice Chairman 1-8-323,Paiga Palace Opp:Police Lines, Rasoolpura Secunderabad.
4 A.P.Pollution Control Board Rep.by its Member Secretary Maitrivanam HUDA Complex S.R.Nagar, Hyderabad.
5 Hyderabad Entertainment and Amusements Developers Pvt Ltd., Rep.by its Manager, Rock Garden Project Necklace Road, Hyderabad

Respondents

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus declaring the action of the respondents in not taking action to prevent further filling up encroachment of the lake water body of Hussain Sagar and giving permissions to construct permanent structures with non-biodegradable substances in the name of rock garden as unconstitutional and violation of Environment (Protection) act 1996, Water(Prevention and Control of Pollution) Act 1974 and also the spirit of the Judgment in W.P.No.26378/2000,reported in 2001 (4) ALD 776(DB) and consequently set aside the proceedings of the Member Secretary APPCB, Lr.No.57/PCB/C.Estt/2001, dated: 15-2-2002 and declare that no permanent structures shall come in and around the Hussain Sagar and no filling up of water body of Hussain Sagar Shall take place as indicated in judgment of Supreme Court in SCC 2001(6) 496.

Counsel for the Petitioner : MR.K.S.MURTHY

Counsel for the Respondent No.1 : THE ADVOCATE GENERAL

Counsel for R-2 & R-3 : B.Viswanadha Reddy, SC for HUDA.

Counsel for R-4 : Sri S.V.Bhatt, SC for APPCB

Counsel for R-5 : Sri S.R.Ashok

The Court made the following :

THE HON'BLE SHRI DEVINDER GUPTA,

THE CHIEF JUSTICE

AND

HON'BLE MS. JUSTICE G.ROHINI

-

WRIT PETITION NO. 7848 OF 2003

-

ORDER : (Per G.Rohini, J)

The Forum For A Better Hyderabad (Confederation of Voluntary Organisations of Hyderabad) is the petitioner in this Writ Petition filed by way of Public Interest Litigation. The petitioner seeks a Writ of Mandamus declaring the alleged inaction on the part of the respondents to prevent further filling-up and encroachment of the water body of Hussain Sagar lake and granting permissions to construct permanent structures with Non-Biodegradable substances in the name of Rock Garden as unconstitutional and violative of Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974 and also the spirit of the Judgment of the Division Bench of this Court in W.P.No.26378 of 2000 {*FORUM FOR A BETTER HYDERABAD, (CVO OF HYD.) v. GOVT. OF A.P.}*. The petitioner also seeks a consequential relief to set aside the proceedings of the Member Secretary, A.P. Pollution Control Board, dated 04-01-2003 and the further proceedings dated 20-03-2003 whereunder clearance was granted to the revised

architectural plans for Rock Garden and further to direct the respondents to take action as per the proceedings of the A.P. Pollution Control Board dated 15-02-2002.

The facts which are not in dispute may be noted as under :

On 13-12-2001 the Secretary to the Government of A.P. Youth Advancement, Tourism & Culture Department (hereinafter referred to as the Tourism Department) wrote a letter to the A.P. Pollution Control Board (for short, 'the Board') seeking no objection certificate for the project called ROCK GARDEN adjacent to Hussain Sagar. The Proponent of the project is the Hyderabad Entertainment and Amusements Developers (P) Limited, the 5th respondent herein. Both the Tourism Department as well as the Proponent addressed letters to the Board assuring that only Bio-degradable material would be used for construction of the structures and that the project will be made an entirely eco-friendly one without disturbing the rocks, trees and vegetation. The issue was discussed in the Consent for Establishment Clearance Committee Meetings of the Board held on 08-01-2002 and also in the Special Board Meeting held on 06-02-2002 and it was decided to clear the proposal of Rock Garden provided the suggestions specified thereunder are incorporated in the project proposal for compliance and to redesign the layout accordingly.

In pursuance thereof, the Board issued the letter dated 15-02-2002 incorporating the suggestions made in the meetings of the clearance committee and the Board and also specifying the **following** additional conditions required to be followed by the Project Proponent.

- ***All structures should be of bio-degradable materials like Terra Cotta, Wood, Clay, Thatch, Bamboo etc. No polymers (LLDPE, LDPE or HDPE) material will be allowed inside the campus. Utensils, if any, shall either be of terracotta, clay or of reusable non-plastic materials.***
- *No unauthorized food vendors shall be permitted in front of the Rock Garden.*
- *Water slides, Games, and Pools can only be on movable /*

inflatable apparatus. Duck pools or swimming pools shall not use Lake Water.

- *Domestic waste should be treated in STP and disposed off after conforming to surface water standards of APPCB.*
- *The developers shall use nutrient-rich soil for transplantation of full-grown trees of relevant species, which can enhance shade, perches and bird presence in the area.*
- *No change in land use shall be permitted at any time in the future.*
- *The entry to the Rock Garden should be either by walk or by shuttle buses up to the entrance.*
- *The developers shall be held responsible and legally liable for any vehicles parked outside or inside the garden premises under the provisions of the Environment (Protection) Act, 1986.*
- *The developers shall take steps to clean the banks of the Hussain Sagar and the inlet channel nearest to the rock garden area.*
- *The developer shall be legally liable under the E (P) Act, 1986 for any solid waste found in the premises of the garden or in the water adjacent to the Rock garden.*
- *A study should be got conducted by the proponent through a competent Ornithologist consultant regarding bird habitats in that area and the report should be submitted to the Board, relating inter alia, what action would be taken by the proponent to enhance avifauna life in the rock garden area.*
- *If there is any violation of conditions stipulated by the Board, the occupier shall be prosecuted and the activity directed to be closed under Environment Laws.*

It appears that thereafter the Proponent proposed certain alterations to the architectural plans for Rock Garden and the revised architectural plans were forwarded by the Buddha Poornima Project Authority (working under the administrative control of the Tourism Department) seeking clearance of the Board. The issue was discussed in the Technical Committee Meeting held on 26-11-2002 and also in the Board Meeting held on 20-12-2002 and based on the presentation

made by the Proponent on the revised proposals, the Board has decided to clear the revised architectural plans of Rock Garden from the point of view of Environmental Sustainability and Ecological Balance subject to the condition that certain changes specified thereunder are incorporated by the proponents in their plans. The same was intimated to the Buddha Poornima Project Authority by letter dated 04-01-2003 making it clear that the Proponent shall furnish the revised proposals incorporating all the points specified thereunder and that till then no construction should be allowed. It was also mentioned that the lake boundaries which fall in the possession of the Proponent may be carefully surveyed and the boundaries may be fixed with Bennet Stones particularly at bend-points. It was also directed that the area which was found to be filled-up with debris by the proponent should be reclaimed at Proponent's costs.

In pursuance thereof, the Proponent submitted the final revised architectural plans incorporating all the changes as suggested by the Board. After careful scrutiny of the same, the Board approved the revised architectural plans vide its letter dated 20-03-2003 subject to the **following** conditions :

1. ***The total built-up area should be below 10% and not exceed 2104.86 sq.mt as shown by the proponent in a total area of 21483.10 sq.mt of the present site.***

2. ***The food courts should be limited to only 2 Nos. as proposed.***

3. *Separate and sufficient parking lots should be provided within the project so that no parking is permitted along the Necklace Road.*

4. ***The height of the construction/structure should be restricted to max.8.00 mts i.e., in the case of item No.6 (Lunar Fast Food Restaurant) and the same should necessarily be single-storied and well below the tree level keeping in view the bird habitat in that area. There should not be any access to the people at the roof of this structure.***

5. ***The 30 Mts. wide buffer zone should be maintained from the water boundary to avoid water pollution / dumping of waste into the water. No structures, permanent or temporary other than already existing viewing platform (No.15), within this buffer zone shall be***

allowed. This buffer zone should be clearly demarcated with masonry pillars or bench marks at various points.

6. ***The construction material to be used should necessarily bio-degradable except in case of steel frame work which may be required or structure stability. The structures should not be permanent in nature and even the steel frame work required for structural safety should be so erected that it can be dismantled whenever is required.***

7. The concrete foundations, which have been necessitated because of the poor soil conditions such as low bearing capacity, should be strictly below the ground level.

8. *As agreed by the proponent during their presentation before the Board, the project shall have an environmental education centre-cum-exhibition preferably through which children should enter the park.*

9. *Water slides, games and pools can only be on movable / inflatable apparatus. Duck pools or swimming pools shall not use the lake water. The water required for these games shall be procured through HMWS & SB and ground water.*

10. The nutritious soil from bed of the lake should be used for transplantation of fully-grown trees of relevant species, which can enhance shade perches and bird presence in the area.

11. Steps shall be taken to clean the banks of Hussain Sagar and inlet channel nearest to the Rock Garden area.

12. None of the existing trees and rocks should be disturbed or defaced.

13. The proponent informed that they have got an In-Principle clearance from HMWS & SB to connect the sewer lines to the main disposal system and shall submit the same to the Board within a month.

Further the proponent shall collect all solid waste, recyclables, paper in separate main garbage bins and disposed of with the help of the MCH. The location of these bins should be clearly demarcated.

14. The amount of residual debris that would be created during the

dismantling, shall be transported away from the site without disturbing the natural surroundings.

15. *The portion of lake area that has been reclaimed by the proponent to extend the park area by filling it up with rubble or any other means shall be restored back into the lake water.*

16. *Clear marking of the present lakeshore in this area shall be made, so as to demarcate the lake boundary in the form of map drawn to scale which shall be submitted to the Board after getting approved by the competent authorities.*

17. *In order to adequately protect the lake foreshore and to ensure that the visitors are not able to throw any waste material in the lake or pollute the lake in any manner, the proponent shall erect grills and meshes to, not only prevent people from throwing garbage into the lake but also protect the children from accidentally getting too close to the water. Necessary garbage bins all along the water front to facilities the public for garbage disposal shall be provided with proper signage.*

18. *The project developer shall adhere to all the conditions stipulated above.*

In the said proceedings dated 20-03-2003 it has been clearly mentioned that non-compliance of any of the stipulated conditions by the Project Developers will amount to violation of the order in W.P.No.26378 of 2000 and will render the Project Developer liable for prosecution under Section 45-A of the Water (Prevention and Control of Pollution) Amendment Act, 1988 and Section 39 of the Air (Prevention and Control of Pollution) Act, 1981.

The proceedings of the Board dated 04-01-2003 and 20-03-2003 are questioned in this Writ Petition alleging that concrete pillars have been raised by the Proponent and permanent structures are coming up in the name of Rock Garden and that the lake is also being filled-up in violation of the assurances given by the Project Proponent. It is stated that the said fact came to the notice of the petitioner in the month of October, 2002 and immediately thereafter on 19-11-2002 they addressed a letter to the Board requesting to cancel the permission and to prosecute the proponent for violating the conditions stipulated by the Board. However, the authorities failed to take any action and the proponent went ahead violating the

conditions. It is alleged that the Board instead of taking any action against the proponent for the violation of the conditions laid down by it, revised the earlier permission unilaterally and issued the proceedings dated 04-01-2003. Another representation submitted by the petitioner on 03-02-2003 was also ignored and the Board issued the final orders by proceedings dated 20-03-2003 approving the revised architectural plans submitted by the proponent. It is alleged that in the name of the said revised proposal the proponent cut the trees, removed all its natural bushes and also went ahead in filling-up the lake and constructing the structures violating the conditions which were originally agreed upon. It is also alleged that the proponent lobbied with the respondent Authorities and got altered and revised the conditions initially imposed and that all the illegal activities of the proponent have been fully supported by the Tourism Department and Buddha Poornima Project Authority. It is contended that the action of the respondents is violative of the various provisions of the Environment (Protection) Act, 1986 and Water (Prevention and Control of Pollution) Act, 1974 as well as the directions of this Court in W.P.No.26378 of 2000 and therefore this Writ Petition seeking the aforementioned reliefs.

This Court while issuing Rule Nisi, by order dated 01-05-2003 in W.P.M.P.No.10218 of 2003 ordered that the respondents shall maintain *Status Quo* in all respects and that there shall be no construction whatsoever until further orders.

Separate counter-affidavits have been filed by the respondents denying all the allegations made by the petitioner. The Secretary, Department of Youth Advancement, Tourism & Culture of the Government of Andhra Pradesh, in the counter-affidavit filed on behalf of the 1st respondent has explained that based on the recommendations made by a Committee for beautification of Hussain Sagar Lake as a major tourist centre and also the conceptual project report prepared by Charles Correa, the architectural firm, the Government proposed to develop the surroundings of the Hussain Sagar Lake providing recreational and leisure facilities for the inhabitants of Hyderabad as well as tourists. As heavy investment for tourism infrastructure is required, the Government has taken a policy decision in 1998 to create a friendly atmosphere to private investment providing certain incentives and concessions and also escort services. Accordingly private entrepreneurs were

invited by publishing an advertisement to set up certain projects around Hussain Sagar Lake. The Rock garden is one of such projects proposed in about 12.5 acres. After following due procedure, the setting up of Rock Garden Project was awarded to M/s. Hyderabad Entertainment and Amusement Developers (P) Limited vide G.O.Ms.No.220, YAT&C (PMU) Department, dated 07-11-2001. As per the said G.O., the land will be leased for 33 years. The project cost is Rs.27 crores and the project completion period is 24 months. The leased site falls between the water body and the Necklace road and is full of rocks / sheet rocks. The plan and designs of the project were approved by the Buddha Poornima Project Authority subject to certain conditions. The entrepreneur vide letter dated 6-12-2001 assured that they would use only eco-friendly and bio-degradable material like mud, terracotta, wood, clay, bricks, thatches and bamboo etc. When the entrepreneur submitted the revised drawings and plans for approval, the A.P. Pollution Control Board observed that the constructions in the nature of permanent structures with multistoried floors using concrete and steel are against their earlier stipulation. By letter dated 10-10-2002 the entrepreneur clarified with necessary supporting scientific material that Steel and Concrete is used only for foundation purposes due to poor soil conditions and that the structures that may come up on this foundation are dismountable and thus Steel is bio-degradable. The Youth Advancement, Tourism and Culture Department also addressed a letter dated 01-11-2002 to the A.P. Pollution Control Board agreeing with the bio-degradable nature of the Steel and dismountable structures whenever required. In pursuance thereof, the A.P. Pollution Control Board on 04-01-2003 has conveyed approval of the revised plans subject to incorporating the changes such as limiting the built-up area to 10%, reducing the number of food courts, providing 30 mts. buffer zone from water level, restricting the height of the construction to single-storied below the tree level etc. Finally, the A.P. Pollution Control Board approved the proposals and plans by letter dated 20-03-2003 subject to the conditions that the food courts should be limited two and that the existing trees should not be disturbed or defaced and that the portion of the lake area that was reclaimed by filling it up with rubble shall be restored. In pursuance thereof, the Buddha Poornima Project Authority released the final documents with the same conditions and the Tourism Department has also directed the entrepreneur vide letter dated 01-04-2003 to strictly adhere to the terms and conditions without any deviation. A meeting was convened on 07-05-2003 by the Principal Secretary, Tourism, wherein the entrepreneur stated that they are not going for any permanent structures and their

works are limited for development of greenery, water-falls, water-fountains, attractive lighting system, view-point etc., as per the concept. Thus, it is stated that all precautions have been taken to protect the water spread of Hussain Sagar and the environment and that the project in question has also been designed to be in conformity with the environmental laws and the Judgment in W.P.No.26378 of 2000. It is also in conformity with the policy of the State to protect the water bodies. The allegations that the trees were cut and a part of the lake was filled has been denied and it is stated that the Government is making every endeavour to ensure that no project undertaken by it has any deleterious effect on the environment or on any lakes.

Sri R.M.Gonela, the Member Secretary of the A.P. Pollution Control Board has sworn to the counter-affidavit filed on behalf of fourth respondent stating that the project "Rock Garden" is eco-friendly and the material proposed to be used is bio-degradable viz., mud, terracotta, wood, clay, bricks, teak and bamboo and structures would be erected with wooden poles and bamboo. Further to control or reduce traffic, the 5th respondent assured that they would provide shuttle buses from the existing parking lots to the site to facilitate public. The Board has discussed the above issue in its C.F.E. clearance committee meeting held on 08-01-2002. For better appreciation of the project and its implementation on Hussain Sagar, it was decided to place the issue before full Board. The 5th respondent was called upon to present the plans of Rock Garden. The Board in its meeting held on 06-02-2002, after considering various factors, cleared the proposal with several conditions and the clearance letter dated 15-02-2002 was issued in which one of the main conditions was that "All structures should be of bio-degradable materials like Terra Cotta, Wood, Clay, Thatch, Bamboo etc., and no Polymer (LLDPE, LDPE or HEPE) material will be used inside the campus." The Board called upon the 5th respondent to submit revised plan for approval. Accordingly, the 5th respondent submitted the revised proposal through letter dated 14-08-2002. The Board again placed the revised proposal for consideration before Technical Committee in the meeting held on 26-11-2002. The Technical Committee of the Board has examined and recommended to permit parking lots within the project site as the project is primarily meant for children and would not have any ecological implications. Further the Technical Committee of the Board considered the plea of 5th respondent to use steel

and use of concrete for foundations upto ground level as it will provide safety to public and on the other hand the structures can be very easily dismantled, removed and if necessary reused elsewhere. The Technical Committee of the Board has suggested that the ecologically acceptable development would be possible only if specific attention is paid to the **following** aspects :

a) The excessive focus on cuisine (restaurants, food courts & juice centre) shall be downgraded to give greater emphasis on entertainment and amusement aspects.

b) The structures that are not necessary to raise above the ground should be eliminated. Example of this is the entry castle, which need to be replaced by a suitably designed gate.

c) All the structures should be of minimum height necessary preferably single storied and in any case below the height of the trees in the area.

d) Materials such as lime mortar, surki mortar, brick walls etc., that can lead to generation of large quantity of debris at the time of dismantling must be avoided. Alternatives should be thought by the project proponent. The suggestion in this regard for the replacement of lime mortar/ surki mortar may be the use of thatch / straw and mud plaster. Walls can also be made by mud and thatch or particle boards that can easily be dismantled. As per National Building Code, steel structures are classified as permanent structures. However, it can be appreciated that bolted steel structures are easy to dismantle and can be removed from the area and do not create debris problem.

On 20-12-2002 the Board approved the revised proposals with some changes and vide letter dated 04-01-2003 the fifth respondent was directed to submit revised drawings incorporating the changes suggested. The revised drawings furnished by the fifth respondent were examined thoroughly and after considering the Technical Committee's recommendation, approval was issued on 20-03-2003. It is stated that the conditions stipulated in the clearance letter were not revised while approving the plans, but on the other hand the Board imposed stringent conditions like 30 mts. buffer zone which was not there earlier in the clearance letter and therefore there is no violation of the order in W.P.No.26378 of

2000.

A detailed counter-affidavit has also been filed on behalf of the 5th respondent - Proponent stating that in view of several safeguards taken by them, the directions of this Court in W.P.No.26378 of 2000 are carefully observed and there is no violation of the environmental laws or any other law. The allegations of cutting the trees and filling-up of lake area are specifically denied and it is stated that it is the endeavour of the fifth respondent to restore and enhance the vegetation, tree cover and landscape on the project site which have become highly degraded over the years due to encroachment by land grabbers.

So far as the allegation of construction of the permanent structures, it is explained that they got revised architectural plans prepared for the proposed project as per the suggestions of the Pollution Control Board and also got soil tests done in the site. The soil tests showed that the soil had very poor load bearing capacity and the engineers advised that concrete foundations would be necessary to ensure stability and safety of the proposed temporary structures to be erected in the project. The use of concrete foundations and steel support structure was necessitated due to weak soil and chemically active soil. Further the lake water is contaminated and water table is also high. This creates a risk of the structures decaying very fast if wood, steel frames, etc., were directly fixed into soil. Hence, to avoid risk of collapse and danger to the lives of the people utilizing the park, they had no other alternative but to use cement foundations below soil level to support the temporary steel structures. By letter dated 10-10-2002 they informed the Board that the structures were to be supported by steel frame work which would be fixed with nut and bolt system and the structures could be dismantled as and when required. The concrete foundations would be below the soil level. They also gave detailed clarifications to the Board by letter dated 06-03-2003. It was clarified that all the proposed structures are single storied and are well below the tree levels. The 30 mts. buffer zone has been clearly marked and no structures are proposed in the buffer zone and revised plans were accordingly submitted which were approved by the Board on 20-03-2003. It is stated that the said approval is in consonance with the directions of the Division Bench in W.P.No.26378 of 2000 as well as environmental laws.

The Hyderabad Urban Development Authority and the Buddha Poornima Project Authority filed a separate counter-affidavit in the same lines reiterating that no environmental laws are being violated and that no ecological imbalance will result by the Project in question.

We have heard the learned Counsel for both parties and perused the material on record.

The learned Counsel for the petitioner Sri K.S. Murthy submitted that the impugned proceedings of the Board dated 20-03-2003 approving the revised proposals of the Proponent are in clear violation of the Judgment of the Division Bench of this Court in *FORUM FOR A BETTER HYDERABAD, (CVO OF HYD.) (1 supra)* wherein it was held that no permanent structures can be allowed to be raised on or near the water spread or catchment area of Hussain Sagar Lake. He points out that as per the said Judgment even the construction of amusement parks etc., for the purpose of encouraging tourism can be allowed only where it would result in sustainable development which would not create any ecological imbalance. He contends that the activities of the 5th respondent-proponent in raising the permanent structures, filling-up the lake and cutting the trees in the name of the proposed Project which would result in serious ecological imbalance cannot be said to be in conformity with the principle of sustainable development. Thus, according to the learned Counsel the impugned proceedings dated 04-01-2003 and 20-03-2003 under which the originally agreed upon conditions have been unilaterally altered by the Board without application of mind to the relevant factors are not only contrary to the directions issued by the Division Bench in W.P.No.26378 of 2000, but they are also arbitrary and violative of the environmental laws and therefore the same are liable to be set aside.

On the other hand, Sri T.Anantha Babu, the learned Senior Counsel for the respondents 2 and 3 submits that only such constructions which may have affect on environmental standards are prohibited by the Judgment in W.P.No.26378 of 2000. He contended that as per the revised plans all the structures are dismountable and

proposed to be built with only bio-degradable material and therefore the Project which neither consists of permanent structures nor creates any environmental imbalance is not in violation of the directions of the Division Bench much less the provisions of any Statute.

The learned Counsel for the 4th respondent - A.P. Pollution Control Board, Sri S.V.Bhat, contended that the architectural plans for Rock Garden were approved by the Board under the impugned proceedings after due consultations with the expert committee and after being satisfied that it will not have any adverse environmental effect. While referring to several conditions under the impugned proceedings, he submitted that every care has been taken by the Board to protect the environmental standards and the allegations of the petitioner are unfounded.

The contention of the learned Senior Counsel, Sri S.R.Ashok, appearing for the 5th respondent is that the concrete constructions allowed to be taken up by the proponent are only below ground level and that the same cannot be said to have caused any environmental imbalance. He submits that the revised plans were rightly approved by the Board to ensure stability to the constructions to be made. He also points out that several stringent conditions imposed by the Board while granting approval under the impugned proceedings made it clear that the directions issued by the Division Bench in W.P.No.26378 of 2000 have been carefully observed and therefore the writ petition is misconceived and liable to be dismissed.

Having regard to the pleadings of the respective parties and taking note of the submissions made at the Bar, the main grievance of the petitioner appears to be that in the name of the proposed project, the 5th respondent has been allowed to indulge in filling-up of lake and to proceed with erection of permanent structures which according to the petitioner are in violation of the orders of this Court in W.P.No.26378 of 2000. So far as the respondents 1 to 4 are concerned, the complaint of the petitioner is that they have been supporting the 5th respondent - proponent to carry on the aforesaid alleged activities in contravention of environmental laws and for the said purpose they have issued the impugned

proceedings unilaterally altering the conditions originally agreed upon.

Before adverting to the rival contentions raised by the parties, we may refer to the decision of the Division Bench of this Court in W.P.No.26378 of 2000 and the directions issued in the said case with regard to protection of Hussain Sagar Lake.

In the said case, the contention of the petitioner therein was that the 18 projects which had been undertaken by the State which included Imax Theatre, Amusement Park, Office Complex, State Museum and International Convention Centre in the name of promotion of tourism would amount to commercial activities within the water body of **Hussain Sagar Lake** and wet lands adjoining thereto and that the same are clearly violative of the Master Plan as also the Zonal Regulations framed by HUDA under the provisions of the A.P. Urban Areas (Development) Act, 1975. It was also contended that the identification of the said area as recreational zone was in violation of the master plan or zonal development plan and the purported developmental activities would have a negative impact on the quality of water. The Division Bench having referred to the notification issued by the HUDA dated 04-05-2000 in which 169 large lakes were identified for planned development and for protection of the environment including the Hussain Sagar Lake and the subsequent amendments brought out by the HUDA to the notification by converting a portion of the area from open space to recreational zone and also the fact that an in depth study was conducted by the State whereupon a master plan for beautification of Hussain Sagar Lake has been undertaken, while observing that from the reports submitted before the Court it appears that various aspects having regard to the decisions of the Apex Court had not been taken into consideration, concluded as under :

> *"We therefore are of the opinion that no further permanent structures including those involving commercial activities may be allowed to be raised on or near the water spread or catchment area. However, the other aspects of the proposed activities viz., construction of an amusement park etc., may be allowed. But prior thereto, the A.P. Pollution Control Board must go into all aspects of the matter including the questions raised herein and certify that creation of such entertainment parks, etc., for the purpose of encouraging tourism*

would result only in sustainable development which would not create any ecological imbalance."

As can be seen, though the Division Bench prohibited permanent structures on or near the water spread or catchment area of Hussain Sagar Lake, it was further added that the construction of an amusement park etc., may be allowed in case the A.P. Pollution Control Board considered all aspects of the matter and certified that creation of such entertainment parks etc., for the purpose of encouraging tourism would result only in sustainable development which would not create any ecological imbalance. Hence, as rightly contended by the learned Counsel for the respondents there is no total prohibition as such of making constructions in and around Hussain Sagar Lake. What was prohibited by the Division Bench was only those constructions which would defeat the principle of sustainable development and those which would create ecological imbalance.

In the background of the above facts, the main question that arises for consideration by us is whether the Board while granting approval for the revised plans of the project 'Rock Garden' has in any manner acted contrary to the directions of the Division Bench in W.P.No.26378 of 2000. In other words, whether the proposed project in any way defeats the principle of sustainable development and whether the activities of the proponent in connection with the said project would result in ecological imbalance.

Admittedly, both the Proponent as well as the Tourism Department assured the Board while seeking no objection certificate that only eco-friendly and bio-degradable material are proposed to be used. The Board issued clearance letter dated 15-02-2002 subject to the condition that all the structures should be of bio-degradable material like terracotta, wood, clay, thatch, bamboo etc., and that no polymers material will be allowed inside the campus and that utensils if any shall either be of terracotta, clay, or of reusable non-plastic material. However, on conducting soil tests, it was found by the proponent that the soil had very poor load bearing capacity. On the basis of the advice by the engineers that concrete foundations would be necessary to ensure stability and safety of the proposed

temporary structures to be erected in the project, to avoid risk of collapse and danger to the lives of the people, the 5th respondent –Proponent by letter dated 10-10-2002 submitted to the Board that the concrete foundations would be below the soil level and that the structures will be supported by steel framework which would be fixed with nut and bolt system and that the structures would be dismantled as and when required. They gave detailed clarifications to the Board by letter dated 06-03-2003 stating that all the proposed structures are single storied and are well below the tree levels and that no structures are proposed in the 30 mts. buffer zone. It was also clarified that it did not propose to cut the existing trees or disturb the rocks. Pursuant to the said clarification and revised maps submitted by the 5th respondent, the Board considered the issue in detail and approved the revised plan under the impugned proceedings subject to 18 conditions specified thereunder. Some of the important conditions with regard to the proposed structures are as follows :

1. ***The total built-up area should be below 10% and not exceed 2104.86 sq.mt as shown by the proponent in a total area of 21483.10 sq.mt of the present site.***

2. ***The food courts should be limited to only 2 Nos. as proposed.***

3. ***Separate and sufficient parking lots should be provided within the project so that no parking is permitted along the Necklace Road.***

4. ***The height of the construction/structure should be restricted to max.8.00 mts i.e., in the case of item No.6 (Lunar Fast Food Restaurant) and the same should necessarily be single-storied and well below the tree level keeping in view the bird habitat in that area. There should not be any access to the people at the roof of this structure.***

5. ***The 30 Mts. wide buffer zone should be maintained from the water boundary to avoid water pollution / dumping of waste into the water. No structures, permanent or temporary other than already existing viewing platform (No.15), within this buffer zone shall be allowed. This buffer zone should be clearly demarcated with masonry pillars or bench marks at various points.***

6. ***The construction material to be used should necessarily bio-degradable except in case of steel frame work***

which may be required or structure stability. The structures should not be permanent in nature and even the steel frame work required for structural safety should be so erected that it can be dismantled whenever is required.

7. ***The concrete foundations, which have been necessitated because of the poor soil conditions such as low bearing capacity, should be strictly below the ground level.***

The learned Counsel for the petitioner mainly contended that the above conditions under the impugned proceedings are in total deviation of the initial conditions imposed under the clearance letter dated 15-02-2002 insisting that all the structures should be of bio-degradable material. It is also contended that the revised conditions permitting to use steel frames and to erect concrete foundations would result in defeating the concept of sustainable development and that the same are against the spirit of the judgment of the Division Bench in W.P.No.26378 of 2000. We are unable to agree.

A perusal of the conditions extracted above would clearly go to show that even under the revised approval the proponent has been strictly prohibited from using non-biodegradable material for construction purpose except in case of steel framework which is required for structure stability. It has been further specified that the steel framework should not be permanent in nature and that it should be so erected that it can be dismantled whenever is required. Even the concrete foundations which have been necessitated because of poor soil conditions have been allowed only below the ground level. In the circumstances, we cannot accept the submission of the learned Counsel for the petitioner that the proposed structures are permanent in nature merely on the ground that the structures will be erected on concrete foundations. The authorities empowered under the relevant statutes, on the basis of the opinion of the expert bodies, having examined the said aspect in detail and having been satisfied that the proposed structures will not be of permanent nature, thought it fit to allow steel framework on concrete foundations to ensure safety of the structure. At the same time, they imposed several stringent conditions such as limiting the built-up area to 10%, reducing the number of food courts to two and restricting the height of the construction to single-storied below the tree level.

That apart, 30 mts. buffer zone was prescribed to avoid any possible water pollution. On a combined reading of the conditions under the impugned proceedings, we are unable to hold that there is any substantial deviation from the conditions initially imposed. We also do not find any substance in the contention of the petitioner that the Board while granting the approval under the impugned proceedings acted hastily or without application of mind to the relevant factors. The conditions imposed under the impugned proceedings would clearly demonstrate that the Board has taken adequate care to prevent the ecological imbalance if any. This Court neither possesses the expertise nor it is permissible for this Court in exercising the jurisdiction under Article 226 of the Constitution to sit in Appeal over the considered opinion of the statutory authority that the proposed structures under the revised plans are eco-friendly and not permanent in nature.

As observed by the Supreme Court in *VELLORE CITIZENS WELFARE FORUM v. UNION OF INDIA* **sustainable development** is a balancing concept between ecology and development. The Supreme Court has also reiterated some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents which include Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and co-operate, Eradication of Poverty and Financial Assistance to the developing countries.

It is also well settled that the State has a responsibility to protect the environment for the future generations, but at the same time a balance has to be struck between the sustainable development and preservation of environment so that both can coexist together. Even the Division Bench in *FORUM FOR A BETTER HYDEABAD, (CVO OF HYD.)* (1 supra) left it open to the discretion of the Board to permit creation of entertainment parks etc., for the purpose of encouraging tourism which would result in sustainable development and would not create any ecological imbalance.

It is relevant to note that the petitioner never raised any objection with regard to the initial clearance to the project in question under the proceedings dated 15-02-

2002 on any ground whatsoever. The only objection now raised is that the approval of the revised plans is in violation of the principle of sustainable development on the ground that the nature of the proposed structures are permanent in nature. As already expressed above, we do not find any justifiable reason to hold that the proposed structures under the revised plans are permanent in nature nor they are in any way contrary to the directions of this Court in W.P.No.26378 of 2000 or any environmental laws.

It is also clear from the counter-affidavit of the 5th respondent that they have taken great care to preserve the existing trees and that they have already planted a large number of trees and planning to plant more trees to ensure that the total number of trees that would be coming up in the project area upon completion of the project would be at least five times the originally existing number. In addition to that, the 5th respondent is also taking steps to plant herbs, shrubs and bushes to enhance the landscape and vegetation. Water-falls are being created to enhance the natural features. The water conservation is also managed by contouring and terracing to conserve and direct the flow of rain water. The 5th respondent has taken particular care to enhance and maintain the distinctive identity of the landscape including the rocks, trees and the lake front. The soil pockets in the rocky areas are being planted to reduce heat radiation from rocks.

Though the petitioner alleged that the lake was already filled-up at some points, the 5th respondent denied the said allegation. The said question being disputed question of fact, we decline to go into the same. Instead, we direct the A.P. Pollution Control Board to enquire into the said allegation and to take the appropriate steps in accordance with law for reclaiming the lake if the allegation is found to be true.

Having regard to the aforesaid facts and circumstances of the case, we are satisfied that the respondents have taken utmost care to ensure that the environmental impact of the project in question is minimal. The 5th respondent has

also made it clear that they are always bound by any suggestions from the Board to develop the project as eco-friendly.

In the circumstances, we are of the view that the matter does not call for any interference by this Court. However, we make it clear that the Board shall ensure strict adherence to the conditions laid down in the final clearance dated 15-03-2003 and shall call upon the 5th respondent to file the necessary compliance reports from time to time. The Board shall also constantly monitor the project in question during the construction and even thereafter to ensure that all its activities are in consonance with the provisions of the environmental laws. In case, any violation is found, it is open to the Board to take the necessary action in accordance with law.

The Writ Petition is accordingly disposed of. Needless to mention that the interim order shall stand vacated. No costs.

_____

(DEVINDER GUPTA, CJ)

_____

(G.ROHINI, J)

Dated:20-07-2004.

gbs

To

1 The Secretary,Govt.of A.P, Dept of Youth Advancement
Tourism & Culture, Secretriat, Hyderabad.
2 The Vice-chairman, Hyderabad Urban Development Authority, Paiga Palace Opp: Police Lines, Rasoolpura Secunderabad.
3 The Vice Chairman,Budha Purnima Project Authority, 1-8-323,Paiga Palace Opp:Police Lines, Rasoolpura Secunderabad.
4 The Member Secretary,A.P.Pollution Control Board,
Maitrivanam HUDA Complex S.R.Nagar, Hyderabad.
5 The Manager, Hyderabad Entertainment and Amusements Developers Pvt Ltd., Rock Garden Project Necklace Road, Hyderabad

6. 2CCs to the Advocate General, High Court Bldgs. Hyderabad. (OUT).

7.2CD copies